Supreme Court, U.S.
FILED
05-1402 MAY 3 - 2006
OFFICE OF THE CLERK

No. 05-

IN THE

Supreme Court of the United States

JEROME KOSOY, M.D., BEAUTIQUE, INC., DISCOVERY SERVICES OF TEXAS, INC., and JEFFREY K. MUSKER, D.C., ("CHAIR KING"),

Petitioners,

v.

GTE MOBILNET and CHICK-FIL-A, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

JULIUS GLICKMAN
ASHTON BACHYNSKY
GLICKMAN & HUGHES, L.L.P.
909 Fannin
3800 Two Houston Center
Houston, Texas 77010
(713) 658-1122

THOMAS C. WRIGHT
Counsel of Record
CHAD FORBES
WRIGHT BROWN & CLOSE, LLP
Three Riverway, Suite 600
Houston, Texas 77056
(713) 572-4321

Attorneys for Petitioners

201009

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

In 1991, Congress enacted the Telephone Consumer Protection Act (TCPA) in part to address the increasing proliferation of junk faxes – unwanted advertisements being sent to private fax machines, costing the recipients time, ink, and paper. The TCPA created a private cause of action enforceable in an appropriate State court "if otherwise permitted by the laws or rules of court of a State." State and federal court have now adopted three sharply conflicting conclusions over whether this language relieves states courts from their obligation under the Supremacy Clause to hear TCPA claims: (1) No, (2) No, unless a state passes a statute or rule of court opting out, and (3) Yes, states have no obligation to enforce the TCPA

The lower courts are also split over whether the "if otherwise permitted" language allows state courts to borrow state limitations law and apply it to the TCPA rather than applying the federal residual statute of limitations.

1. Whether Congress by the language "if otherwise permitted by the laws or rules of court of a State," relieved state courts of general jurisdiction of their obligation under the Supremacy Clause to hear TCPA claims unless and until such state passes a law or a rule of court specifically authorizing claimants to bring TCPA claims in that state's courts.

2. If Congress delegated to the states the power to determine whether to enforce a federally–created right, either by state legislation or rules of court, would this delegation be unconstitutional under the Supremacy Clause or the Tenth Amendment, or inconsistent with modern notions of federalism?

3. Whether states that entertain TCPA actions can refuse to apply the four-year federal residual statute of limitations, which applies to all federal actions enacted after 28 U.S.C. § 1658 "[e]xcept as otherwise provided by law," to the TCPA's private action, which was enacted by Congress after § 1658 and does not otherwise provide a limitations period.

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, the corporate Petitioners state that they have no parent companies and no publicly held corporation owns 10% or more of the stock of any such corporate Petitioner.

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